HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 247 of 2006

1. Netra Pal S/o Chhater Singh
2. Khadku S/o Netra Pal
3. Bablu S/o Netra Pal
   All R/o village Laksar
   P.S. Laksar, District Haridwar .....Applicants

Versus

1. State of Uttaranchal
2. Meghraj S/o Mukh Ram
   R/o village Laksar
   P.S. Laksar
   District Haridwar ...Respondents

Mr. Bipin Mohan Pingal learned counsel for the applicants.
Mr. Nandan Arya learned AGA

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the summoning order dated 15.4.2005 passed by the Judicial Magistrate, Laksar, District Haridwar in criminal complaint case No.162/2005 under sections 452, 323, 504, 506 IPC and order dated 16.12.2005 passed by Addl. Sessions Judge, Haridwar in criminal revision No.175/2005.

2. Brief facts of the case are that an FIR was lodged by the applicant No.1 on 25.02.2005 alleging therein that the respondent No.2 has stolen his tractor trolley with the help of the other co-accused. As a counter blast, the respondent No.2 has filed a complaint before the Judicial Magistrate, Laksar, District Haridwar against the applicants alleging therein that the applicants came in his house and hurled abuses and also caused injuries by kicks and fists. It was further alleged that one of the accused persons was armed with countrymade pistol. Immediately, the witnesses reached at the spot and the

accused fled away from the spot. The learned Magistrate recorded the statements under section 200 & 202 Cr.P.C. and thereafter he summoned the applicants vide order dated 15.04.2005. Feeling aggrieved by the order of Magistrate, the applicants preferred a revision before the Addl. Sessions Judge and the same was dismissed vide order dated 16.12.2005. Feeling aggrieved by both orders, the present petition has been filed.

3. The learned counsel for the applicant contended that there is no averment or evidence that the applicants entered into the house of the respondent No.2 and caused injuries to him. It was further contended that the complainant has himself admitted that there was some dispute with regard to the tractor trolley. According to the applicants, an FIR was lodged by the applicant No.1 on 25.02.2005 alleging therein that the respondent No.2 has stolen his tractor trolley with the help of the other co-accused. It is admitted that there is a dispute pending between the parties with regard to the tractor trolley. It was contended that the complaint filed by the respondent No.2 is only a counter-blast of the aforesaid tractor trolley dispute. The Magistrate has not put any questions to the witnesses with regard to the tractor trolley's dispute. The Magistrate has to consider the statement on oath recorded under sections 200, 202 Cr.P.C. and other evidence filed on behalf of the complainant. It is the duty of the Magistrate to ensure as to whether the case is probable and whether the case is concocted or correct one. The learned Magistrate should have put questions to the witnesses as well as to the complainant. The learned counsel for the applicants has referred the decision of the Hon'ble Apex Court in M/s Pepsi Food

Ltd. Vs. Special Judicial Magistrate J.T. 1997(8) S.C. p/ 705, in which it has been held as under:

> *"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot bet set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

4) The above proposition of law clearly emphasizes that the Magistrate, while summoning the accused or taking the cognizance, should scrutinize the evidence and put the questions to all the witnesses as well as to the complainant.

5) In view of the above, the summoning order passed by the learned Magistrate is liable to be set aside. The Magistrate should have put the question to the complainant and his witnesses to know the veracity of the incident. It is also admitted case that there is dispute with regard to the tractor trolley pending in between the parties. The Magistrate should have verified by putting questions as to whether the present complaint is actually a counter-blast or as to whether the incident took place or not.

6) Therefore, the summoning order dated 15.4.2005 passed by the Judicial Magistrate, Laksar, District Haridwar in criminal complaint case No.162/2005 under sections 452, 323, 504, 506 IPC and order dated 16.12.2005 passed by Addl. Sessions Judge, Haridwar in criminal revision No.175/2005 are set-aside. The case is remitted back to the learned Magistrate to decide the same afresh in the light of the observations made above.

7) The petition is disposed of accordingly. The misc. application, if any, is also disposed of.

(J.C.S. Rawat, J.)

Dated 21.04.2006

LSR